
TITLE 326 AIR POLLUTION CONTROL DIVISION

FINDINGS AND DETERMINATION OF THE COMMISSIONER
PURSUANT TO [IC 13-14-9-8](#) AND DRAFT RULE
LSA Document #16-208

REFERENCES TO THE CODE OF FEDERAL REGULATIONS (CFR)

PURPOSE OF NOTICE

The Indiana Department of Environmental Management (IDEM) has developed draft rule language for [326 IAC 1-1-3](#) updates to references to the Code of Federal Regulations (CFR) to bring it up to date with the July 1, 2015, edition. IDEM is soliciting written comment on the draft rule language and will schedule a public hearing before the Environmental Rules Board for consideration of adoption of these rules.

CITATIONS AFFECTED: [326 IAC 1-1-3](#).

AUTHORITY: [IC 13-14-8](#); [IC 13-14-9](#); [IC 13-17-3](#).

STATUTORY REQUIREMENTS

[IC 13-14-9-8](#) recognizes that, under certain circumstances, it may be appropriate to reduce the number of public comment periods and public hearings usually provided for under the [IC 13-14-9](#) environmental rulemaking process. In cases where the commissioner determines that there is no reasonably anticipated benefit from a second public comment period and first public hearing to either the environment or persons regulated or otherwise affected by the proposed rule, IDEM may forgo these comment periods and proceed directly to the public hearing and board meeting at which the draft rule is considered for adoption. Two opportunities for public comment (with this notice and at the public hearing prior to adoption of the rule) remain under this procedure.

If the commissioner makes the determination of no anticipated benefit required by [IC 13-14-9-8](#), the commissioner shall prepare written findings and publish those findings in the Indiana Register prior to the board meeting at which the draft rule is to be considered for adoption and include them in the board packet prepared for that meeting. This document constitutes the commissioner's written findings pursuant to [IC 13-14-9-8](#).

The statute provides for this shortened rulemaking process if the commissioner determines that:

(1) the rule constitutes:

(A) an adoption or incorporation by reference of a federal law, regulation, or rule that:

(i) is or will be applicable to Indiana; and

(ii) contains no amendments that have a substantive effect on the scope or intended application of the federal law or rule;

(B) a technical amendment with no substantive effect on an existing Indiana rule; or

(C) an amendment to an existing Indiana rule, the primary and intended purpose of which is to clarify the existing rule; and

(2) the rule is of such nature and scope that there is no reasonably anticipated benefit to the environment or the persons referred to in [IC 13-14-9-7\(a\)\(2\)](#) from:

(A) exposing the rule to diverse public comment under [IC 13-14-9-3](#) or [IC 13-14-9-4](#);

(B) affording interested or affected parties the opportunity to be heard under [IC 13-14-9-3](#) or [IC 13-14-9-4](#); and

(C) affording interested or affected parties the opportunity to develop evidence in the record collected under [IC 13-14-9-3](#) and [IC 13-14-9-4](#).

BACKGROUND

"References to the Code of Federal Regulations" at [326 IAC 1-1-3](#) indicates the yearly edition of the CFR that is applicable to federal regulations that have been incorporated by reference throughout 326 IAC, unless a previous edition is specified in a specific rule. By updating the reference to the CFR at [326 IAC 1-1-3](#), the Environmental Rules Board is incorporating by reference the latest version of the CFR, with the exception of those regulations most recently published in the Federal Register (FR).

The latest version of the CFR contained in [326 IAC 1-1-3](#) is July 1, 2013. Since that date, several new federal regulations have been promulgated that are not reflected in the current version of 326 IAC. By updating the reference date to July 1, 2015, 326 IAC will be consistent with those regulations that the federal government promulgated between July 1, 2013, and June 30, 2015.

The 2015 edition of the CFR is a codification of the final and effective regulations published in the FR as of June 30, 2015. IDEM incorporates citations by reference from Titles 29 and 40 of the CFR in 326 IAC. Title 29 of the CFR contains federal regulations for the asbestos program. Title 29 is referenced in [326 IAC 14](#) (Emission Standards for Hazardous Air Pollutants) and [326 IAC 18](#) (Asbestos Management). These regulations are either

directly incorporated by reference into 326 IAC as state-enforceable rule provisions or as federal authority for the implementation and enforcement of state rule provisions. Title 40 of the CFR includes all federal environmental regulations promulgated by the United States Environmental Protection Agency (U.S. EPA). Title 40 is referenced throughout 326 IAC.

Some of the regulations and changes that have occurred since the last update to [326 IAC 1-1-3](#), References to the CFR, include:

78 FR 58416, September 23, 2013 – Final Rule - Oil and Natural Gas Sector: Reconsideration of Certain Provisions of New Source Performance Standards: This rulemaking finalizes amendments to new source performance standards (NSPS) for the oil and natural gas sector. This rulemaking comes as the result of reconsideration of certain issues pertaining to implementation of storage vessel provisions.

79 FR 367, January 1, 2014 – Direct Final Rule - National Emissions Standard for Hazardous Air Pollutants from Secondary Lead Smelting: This rule amends certain regulatory text to clarify compliance dates, clarifies certain provisions in the 2012 final rule related to monitoring of negative pressure in total enclosures, and corrects typographical errors in a table listing congeners of dioxins and furans and the testing requirements for total hydrocarbons.

79 FR 17340, March 27, 2014 – Final Rule - National Emission Standards for Hazardous Air Pollutant Emissions: Group IV Polymers and Resins; Pesticide Active Ingredient Production; and Polyether Polyols Production: This rule amends provisions concerning residual risk reviews; technology reviews; emissions during periods of startup, shutdown, and malfunction (SSM); standards for previously unregulated hazardous air pollutant emission sources; revisions to require monitoring of pressure relief devices that release to the atmosphere; and electronic reporting of performance test results. This rule also lifts the stay of requirements for process contact cooling towers at existing sources in one Group IV Polymers and Resins subcategory, issued on February 23, 2001. These revisions maintain the level of environmental protection or emissions control on sources regulated by these rules.

79 FR 48073, August 15, 2014 – Final Rule – National Emission Standards for Hazardous Air Pollutants Residual Risk and Technology Review for Flexible Polyurethane Foam Production: This rule finalizes the residual risk and technology review (RTR) conducted for the Flexible Polyurethane Foam Production source category regulated under national emission standards for hazardous air pollutants (NESHAP). It also finalizes amendments to correct and clarify regulatory provisions related to emissions during periods of SSM; adds requirements for reporting of performance testing through the Electronic Reporting Tool (ERT); clarifies the leak detection methods allowed for diisocyanate storage vessels at slabstock foam production facilities; and revises the rule to add a schedule for delay of leak repairs for valves and connectors.

79 FR 60898, October 8, 2014 – Final Rule – National Emission Standards for Hazardous Air Pollutants: Generic Maximum Achievable Control Technology Standards; and Manufacture of Amino/Phenolic Resins: This rule finalizes the RTR conducted for the Acrylic and Modacrylic Fibers Production, Amino/Phenolic Resins Production and Polycarbonate Production source categories regulated under NESHAP. It also addresses emissions during periods of SSM and adds standards for previously unregulated hazardous air pollutant emissions sources for certain emission points.

79 FR 68777, November 19, 2014 – Final Rule – Reconsideration of Certain Startup/Shutdown Issues: National Emission Standards for Hazardous Air Pollutants From Coal- and Oil-Fired Electric Utility Steam Generating Units and Standards of Performance for Fossil-Fuel-Fired Electric Utility, Industrial-Commercial-Institutional, and Small Industrial-Commercial-Institutional Steam Generating Units: This rule finalizes the standards applicable during startup periods and shutdown periods in the Mercury and Air Toxics Standards (MATS) and on startup and shutdown provisions related to the particulate matter (PM) standard in the Utility NSPS.

80 FR 13672, March 16, 2015 – Final Rule – Standards of Performance for New Residential Wood Heaters, New Residential Hydronic Heaters and Forced-Air Furnaces: This rule finalizes revisions to the Standards of Performance for New Residential Wood Heaters and adds a new subpart: Standards of Performance for New Residential Hydronic Heaters and Forced-Air Furnaces. This final rule achieves several objectives for new residential wood heaters, including applying updated emission limits that reflect the current best systems of emission reduction; eliminating exemptions over a broad suite of residential wood combustion devices; strengthening test methods as appropriate; and streamlining the certification process.

80 FR 14248, March 18, 2015 – Final Rule – National Emission Standards for Hazardous Air Pollutants: Off-Site Waste and Recovery Operations: This rule finalizes the RTR conducted for the Off-Site Waste and Recovery Operations source category regulated under NESHAP. It also finalizes amendments to correct and clarify regulatory provisions related to emissions during periods of SSM; adding requirements for reporting of performance testing through the ERT; revising the routine maintenance provisions; clarifying provisions pertaining to open-ended valves and lines; adding monitoring requirements for pressure relief devices; clarifying provisions for some performance test methods and procedures; and making several minor clarifications and corrections.

80 FR 15510, March 24, 2015 – Final Rule – National Emission Standards for Hazardous Air

Pollutants: Coal- and Oil-Fired Electric Steam Generating Units: This rulemaking amends the MATS for coal and oil-fired electric steam generating units. It amends the reporting requirements in the MATS rule by temporarily requiring affected sources to submit all required emissions and compliance reports to U.S. EPA through the Emissions Collection and Monitoring Plan System Client Tool and temporarily suspends the requirement for affected sources to submit certain reports using the ERT and the Compliance and Emissions Data Reporting Interface.

80 FR 37366, June 30, 2015 – Final Rule- National Emissions Standards for Hazardous Air Pollutants: Ferroalloys Production: This rule finalizes the RTR conducted for the Ferroalloys Production source category regulated under NESHAP. These amendments include revisions to PM standards for electric arc furnaces, metal oxygen refining processes, and crushing and screening operations, and expand and revise the requirements to control process fugitive emissions from furnace operations, tapping, casting, and other processes.

IC 13-14-9-4 Identification of Restrictions and Requirements Not Imposed under Federal Law

No element of the draft rule imposes either a restriction or a requirement on persons to whom the draft rule applies that is not imposed under federal law. This draft rule imposes no restrictions or requirements because it is a direct adoption of federal requirements that are applicable to Indiana and contains no amendments that have a substantive effect on the scope or application of the federal rule.

Potential Fiscal Impact

Updating the reference to the CFR to mean the July 1, 2015, edition in [326 IAC 1-1-3](#) provides consistency between federal and state rules and does not establish any requirements to which the regulated sources are not already subject. There are no increased costs to the regulated entities due to this rulemaking. The proposed amendments to [326 IAC 1-1-3](#) will have no fiscal impact because the amendments are an incorporation of existing federal law and no impact beyond that already imposed by the federal law is imposed by this rulemaking.

Public Participation and Work Group Information

At this time, no work group is planned for the rulemaking. If you feel that a work group or other informal discussion on the rule is appropriate, please contact Keelyn Walsh, Rules Development Branch, Office of Legal Counsel at (317) 232-8229 or (800) 451-6027 (in Indiana).

Small Business Assistance Information

IDEM established a compliance and technical assistance program (CTAP) under [IC 13-28-3](#). The program provides assistance to small businesses and information regarding compliance with environmental regulations. In accordance with [IC 13-28-3](#) and [IC 13-28-5](#), there is a small business assistance program ombudsman to provide a point of contact for small businesses affected by environmental regulations. Information on the CTAP program and other resources available can be found at:

www.in.gov/idem/ctap

For purposes of [IC 4-22-2-28.1](#), small businesses affected by this rulemaking may contact the Small Business Regulatory Coordinator:

Patricia Daniel
IDEM Small Business Regulatory Coordinator
IGCN 1316
100 North Senate Avenue
Indianapolis, IN 46204-2251
(317) 234-6562 or (800) 988-7901
ctap@idem.in.gov

For purposes of [IC 4-22-2-28.1](#), the Small Business Ombudsman designated by [IC 4-4-35-8](#) is:

Robert Warner
Office of Small Business and Entrepreneurship
One North Capitol, Suite 600
Indianapolis, IN 46204
(317) 232-5679
ombudsman@osbe.in.gov

Resources available to regulated entities through the small business ombudsman include the ombudsman's duties stated in [IC 4-4-35-8](#), specifically [IC 4-4-35-8\(9\)](#), investigating and attempting to resolve any matter regarding compliance by a small business with a law, rule, or policy administered by a state agency, either as a party to a proceeding or as a mediator.

The Small Business Assistance Program Ombudsman is:

Steven N. Howell
IDEM Small Business Assistance Program Ombudsman
IGCN 1301
100 North Senate Avenue
Indianapolis, IN 46204-2251
(317) 232-8587 or (800) 451-6027
snhowell@idem.in.gov

FINDINGS

The commissioner of IDEM has prepared findings regarding this rulemaking updating references to the July 1, 2015, edition of the CFR as required by federal rule. These findings are prepared under [IC 13-14-9-8](#) and are as follows:

- (1) This rule is the direct adoption of federal requirements that are applicable to Indiana and it contains no amendments that have a substantive effect on the scope or intended application of the federal rule.
- (2) Indiana is required by the Clean Air Act to adopt these requirements as state rule.
- (3) The environment and persons regulated or otherwise affected by the proposed rule will benefit from prompt adoption of this rule, because it alleviates unnecessary duplication of rulemaking efforts by the state by directly updating the references to the CFR that have been amended by the U.S. EPA.
- (4) I have determined that, under the specific circumstances pertaining to this rule, there would be no reasonably anticipated benefit to the environment or to persons regulated or otherwise affected by the proposed rule from the first or second written comment period under [IC 13-14-9-3](#) or [IC 13-14-9-4](#), or from the first public hearing under [IC 13-14-9-5\(a\)\(1\)](#).
- (5) The draft rule is hereby incorporated into these findings.

Carol S. Comer
Commissioner
Indiana Department of Environmental Management

REQUEST FOR PUBLIC COMMENTS

This notice requests the submission of comments on the draft rule language, including suggestions for specific revisions to language to be contained in the draft rule. Comments may be submitted in one of the following ways:

- (1) By mail or common carrier to the following address:
LSA Document #16-208, References to CFR
Keelyn Walsh
Rules Development Branch
Office of Legal Counsel
Indiana Department of Environmental Management
Indiana Government Center North
100 North Senate Avenue
Indianapolis, IN 46204-2251
- (2) By facsimile to (317) 233-5970. Please confirm the timely receipt of your faxed comments by calling the Rules Development Branch at (317) 232-8922.
- (3) By electronic mail to kwash@idem.in.gov. To confirm timely delivery of submitted comments, please request a document receipt when sending the electronic mail. **PLEASE NOTE: Electronic mail comments will NOT be considered part of the official written comment period unless they are sent to the address indicated in this notice.**
- (4) Hand delivered to the receptionist on duty at the thirteenth floor reception desk, Office of Legal Counsel, Indiana Government Center North, 100 North Senate Avenue, Indianapolis, Indiana.

Regardless of the delivery method used, to properly identify each comment with the rulemaking action it is intended to address, each comment document must clearly specify the LSA document number of the rulemaking.

COMMENT PERIOD DEADLINE

All comments must be postmarked, faxed, or time stamped not later than June 24, 2016. Hand-delivered comments must be delivered to the appropriate office by 4:45 p.m. on the above-listed deadline date.

Additional information regarding this action may be obtained from Keelyn Walsh, Rules Development Branch, Office of Legal Counsel, (317) 232-8229 or (800) 451-6027 (in Indiana).

DRAFT RULE

SECTION 1. [326 IAC 1-1-3](#) IS AMENDED TO READ AS FOLLOWS:

[326 IAC 1-1-3](#) References to the Code of Federal Regulations

Authority: [IC 13-14-8](#); [IC 13-17-3-4](#); [IC 13-17-3-11](#)

Affected: [IC 13-15](#); [IC 13-17](#)

Sec. 3. Unless otherwise indicated, any reference to a provision of the Code of Federal Regulations (CFR)

shall mean the July 1, 2013, **2015**, edition.

~~*This body of documents is incorporated by reference. Copies may be obtained from the Government Printing Office, 732 North Capitol Street NW, Washington, D.C. 20401 or are available for review and copying at the Indiana Department of Environmental Management, Office of Legal Counsel, Indiana Government Center North, Thirteenth Floor, 100 North Senate Avenue, Indianapolis, Indiana 46204.~~

(Air Pollution Control Division; [326 IAC 1-1-3](#); filed Mar 10, 1988, 1:20 p.m.: 11 IR 2369; filed Jan 6, 1989, 3:30 p.m.: 12 IR 1102; filed Dec 14, 1989, 9:35 a.m.: 13 IR 868; filed Aug 9, 1991, 11:00 a.m.: 14 IR 2218; filed May 25, 1994, 11:00 a.m.: 17 IR 2237; filed Jul 25, 1995, 5:00 p.m.: 18 IR 3381; filed Jul 25, 1997, 4:00 p.m.: 20 IR 3298; filed Oct 30, 2000, 2:13 p.m.: 24 IR 667; filed May 21, 2002, 10:20 a.m.: 25 IR 3054; filed Aug 26, 2004, 11:30 a.m.: 28 IR 17; filed Oct 14, 2005, 10:00 a.m.: 29 IR 795; filed Mar 17, 2006, 1:00 p.m.: 29 IR 2517; filed Apr 26, 2007, 9:38 a.m.: [20070523-IR- 326060412FRA](#); filed Apr 1, 2008, 9:59 a.m.: [20080430-IR-326070373FRA](#); filed Jul 1, 2009, 3:12 p.m.: [20090729-IR- 326080901FRA](#); filed Oct 1, 2010, 3:49 p.m.: [20101027-IR-326100112FRA](#); filed Mar 28, 2012, 12:51 p.m.: [20120425-IR-326110472FRA](#); filed Aug 1, 2014, 10:53 a.m.: [20140827-IR-326130501FRA](#))

[Notice of Public Hearing](#)

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